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BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33556



CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION,  
AND GRAND TRUNK WESTERN RAILROAD INCORPORATED  
- CONTROL -

ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD  
COMPANY, CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY, AND  
CEDAR RIVER RAILROAD COMPANY

ERRATUM TO  
PETITION OF ATOFINA PETROCHEMICALS, INC. AND  
THE KANSAS CITY SOUTHERN RAILWAY COMPANY  
FOR OVERSIGHT, INTERPRETATION  
AND ENFORCEMENT OF MERGER CONDITIONS

ENTERED  
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June 19, 2002

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ATOFINA Petrochemicals, Inc. ("ATOFINA") and The Kansas City Southern Railway Company ("KCS"), by and through their undersigned counsel, hereby file this Erratum to the Petition filed on June 18, 2002.

The last line of footnote Number 35, page 15, was dropped in preparation of the Petition for filing. A corrected copy of page 15 is attached and should be substituted in the Petition.

A handwritten signature in dark ink, appearing to read "Martin W. Bercovici".

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test applied in *CN/IC* and that should be the test applied to ATOFINA and other similarly situated shippers.

ATOFINA and KCS request that the Board apply the rationale of the Geismar Condition in accordance with the following simple test: shippers who could have received direct KCS service via an industry connector should be deemed included in the Geismar Condition; shippers for whom additional line construction authority may have been required, *e.g.*, ATOFINA, should qualify for inclusion in the Geismar Condition if they extend rail service to the Geismar area to be served by KCS.<sup>35</sup>

Equitably, functionally and substantively, the interpretation requested by ATOFINA and KCS is consistent with Board precedent, the Access Agreement, and the Geismar Condition in *CN/IC*. Such a holding would simply reiterate the long standing principle espoused by the ICC and the STB that no shipper should lose the competition that a potential build-in/build-out provides as a result of a merger.

### III. CONCLUSION

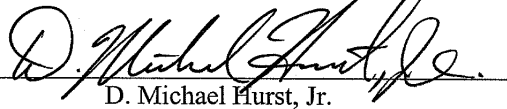
In summary, the loss of a build-in/build-out option is recognized by the Board to constitute a significant loss of potential competition. The CN-KCS Access Agreement was determined by the parties and the STB to be directly related to the CN/IC merger. As a consequence of the Access Agreement, the KCS Geismar build-in was effectively terminated, thereby eliminating a potential build-in and representing a significant loss of potential

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<sup>35</sup> As detailed above, in prior mergers where the merger would have extinguished competitive service rendered via a build-in/build-out, the Board has retained the build-in/build-out opportunity coupled with trackage rights granted to another carrier. Here, where the competitive line was extinguished, the Board properly refrained from imposing a requirement on Rubicon, Uniroyal and Vulcan to construct an industrial lead to nowhere for the sole purpose of preserving the *status quo ante* of demonstrating that they could have reached KCS if the Geismar line had been built. The test set forth above preserves this same distinction, as well as the principle enunciated in *BN/SF*, *supra*, that new rail line construction, if it then would have been required for competitive service, still is required.

**CERTIFICATE OF SERVICE**

This is to certify that I have this 19<sup>th</sup> day of June, 2002, caused the foregoing Erratum to the Petition of ATOFINA Petrochemicals, Inc. and The Kansas City Southern Railway Company for Oversight, Interpretation And Enforcement Of Merger Conditions in Finance Docket No. 33556 to be served upon all known parties of record in this proceeding by first-class mail or a more expeditious method.



D. Michael Hurst, Jr.